

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of D.A. ZANONI, Minor.

UNPUBLISHED

March 25, 2014

No. 317937

Oakland Circuit Court

Family Division

LC No. 11-788328-NA

Before: M. J. KELLY, P.J., and CAVANAGH and FORT HOOD, JJ.

PER CURIAM.

Respondent appeals of right the trial court's order terminating her parental rights to the minor child under MCL 712A.19b(c)(i), (g), and (j). Because we conclude there were no errors warranting relief, we affirm.

The Department of Human Services petitioned for temporary custody of the minor child in August 2011. The Department filed a supplemental petition in November 2012. In April 2013, respondent essentially conceded the existence of statutory grounds for termination under MCL 712A.19b(c)(i), (g), and (j). The trial court found that the statutory grounds for termination had been established and set a time for a best interests hearing. After hearing the testimony and reviewing the evidence at the best interests hearing, the trial court found that termination of respondent's parental rights was in the child's best interests. The trial court entered an order terminating respondent's parental right to the minor child in July 2013.

On appeal, respondent contends that the trial court erred in finding that it was in the child's best interests to terminate her parental rights. This Court reviews for clear error the court's finding regarding the child's best interest. *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012). "A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made." *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). In reviewing the trial court's findings of fact, this Court gives due regard to the special opportunity of the trial court to judge the credibility of witnesses. *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005).

A trial court cannot terminate a parent's parental rights unless it finds by a preponderance of the evidence that termination is in the child's best interests. MCL 712A.19b(5); *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). In determining whether termination is in the child's best interests, the court may consider the respondent's history, psychological evaluation, parenting techniques during parenting time, family bonding, participation in the treatment program, the foster environment and possibility for adoption, and the parent's continued

involvement in situations involving domestic violence. *In re Jones*, 286 Mich App 126, 131; 777 NW2d 728 (2009); *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004); *In re AH*, 245 Mich App 77, 89; 627 NW2d 33 (2001). A court may also consider the child's need for permanency, stability, and finality. *Olive/Metts*, 297 Mich App at 42. Moreover, the best-interest "determination is to be made on the basis of the evidence on the whole record." *In re LE*, 278 Mich App 1, 25; 747 NW2d 883 (2008).

Respondent contends that she was not given sufficient time to comply with the parent-agency agreement and termination of her parental rights was premature. Considering the multitude of barriers to reunification that respondent still faced at the time of the best interest hearing, we conclude that the trial court did not clearly err in finding that termination of her parental rights was in the child's best interests.

The child had been in temporary custody since September 2011, and the court adopted the parent-agency agreement in October 2011. Despite numerous opportunities for respondent to comply with her parent-agency agreement, she failed to do so and did not make significant progress toward reunification. By the time the Department filed its supplemental petition, respondent had attended 26 out of 39 parent visits. Not only did she have problems with finding transportation, but on multiple occasions, she also failed to inform the Department or the foster parents that she would be absent. Her failure to regularly attend scheduled parent visits and inability to find transportation continued to be an issue throughout the proceedings. There was also testimony that, even when she attended these one and one-half hour visits, her attention on the child often waned.

Additionally, respondent did not obtain her high school diploma or its equivalent, as required by the parent-agency agreement, and did not obtain employment until four months before the best interests hearing. Respondent still had not found suitable housing and never supported herself independently. She even admitted that she was still unable to care for the child, who, because of his special needs, requires constant attention, a consistent structured routine, and must attend regular doctors' appointments. Considering respondent's limited progress toward complying with the parent-agency agreement after almost two years, it was evident that she could not provide the stability and permanence that the child needed.

Respondent also contends that the trial court erroneously found that she was not continuing with her mental health therapy. Despite this contention, respondent admitted that she had not followed through on her therapy. She received therapy through Easter Seals for a period of time; however, in November 2012 her therapy at Easter Seals ended and she did not seek treatment from Community Network Services until a few days before the best interest hearing. Therefore, the trial court did not err when it found that respondent failed to continue her therapy.

Respondent also asserts that there was no evidence that she would continue to improperly supervise the child or would fail to provide consistent parenting. A review of the record, however, shows substantial evidence that she could not properly supervise the child or provide him with consistent and reliable parenting.

Respondent admitted that she could not care for the child at the time of the best interest hearing. After almost two years, respondent had still not progressed to unsupervised visits. In addition, respondent did not have regular experience in dealing with the child's special needs and she did not educate herself about the child's needs. She also failed to attend parent visits and this led to questions regarding whether she would be able to take the child to his numerous medical appointments. Respondent had yet to live independently and did not have a structured plan for how she would work and care for the child at the same time. There was also evidence that respondent was unable or unwilling to make responsible choices; there was evidence she used illegal substances and had been arrested during the pendency of the proceedings. From this evidence, a reasonable finder of fact could conclude that respondent would be unable to supervise or consistently parent the child.

Next, respondent contends that the trial court completely disregarded the testimony regarding the bond that existed between her and the child, as well as testimony regarding the progress she made toward improving her situation. The record does not support her assertion. The trial court plainly recognized that respondent was making some progress and even expressed sympathy for her situation; however, it placed greater emphasis on the child's needs. And the fact that respondent still had not made significant progress toward complying with the parent-agency agreement after almost two years plainly weighed on the trial court's decision. Consequently, the trial court properly considered the child's needs in light of the totality of the evidence.

Considering the record as a whole, we cannot conclude that the trial court clearly erred when it found that termination was in the child's best interests.

Respondent lastly argues that the Department should have provided her with additional services because she was a ward in addition to being a parent subject to child protection proceedings. Given the Department's failure to provide her with these services, she maintains, the trial court should have determined that the Department failed to make reasonable efforts to reunify her with the child. The trial court's finding that reasonable efforts were made to reunify the family is reviewed for clear error. MCR 3.977(K).

Generally, the Department "must make reasonable efforts to rectify conditions, to reunify families, and to avoid termination of parental rights." *LE*, 278 Mich App at 18. However, while the Department has a responsibility to expend reasonable efforts to provide services to secure reunification, "there exists a commensurate responsibility on the part of respondents to participate in the services that are offered." *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012). Moreover, respondent must sufficiently benefit from the services provided. *Id.*

Here, the Department made reasonable efforts to reunify respondent and the child. Before it filed the petition for temporary custody, it placed respondent in a specialized program for youthful mothers. This program provided respondent with the opportunity to reside with the child so that they could bond as she learned to parent. Yet, the Department received complaints that respondent left the child alone and truanted from the home. After the court took jurisdiction, the Department prepared a parent-agency agreement requiring respondent to complete parenting classes, attend all parent visits, attend individual therapy, obtain her GED or high school diploma, and participate in the SIL program. Respondent was provided with therapy through

Easter Seals, scheduled parent visits, ample time to complete her GED or high school diploma, and an opportunity to participate in the SIL program, which would enable her to gain employment and stable housing. Despite the provision of these services, she consistently failed to participate or benefit from the services. The trial court did not clearly err in finding that reasonable efforts were made to reunify the family. MCR 3.977(K); *Frey*, 297 Mich App at 248.

There were no errors warranting relief.

Affirmed.

/s/ Michael J. Kelly
/s/ Mark J. Cavanagh
/s/ Karen M. Fort Hood